

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHESSY S. DONNELLY,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:21-cv-01117-CDB (SS)

ORDER GRANTING PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT;
DENYING DEFENDANT’S CROSS-
MOTION FOR SUMMARY JUDGMENT

(Docs. 11, 15, 16)

Plaintiff Chessy S. Donnelly (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying her application for disability benefits under the Social Security Act. (Doc. 1). The matter is currently before the Court on the parties’ briefs, which were submitted without oral argument. (Docs. 11, 15, 16). Upon review of the Administrative Record (“AR”) and the parties’ briefs, the Court finds and rules as follows.

I. BACKGROUND

A. Administrative Proceedings and ALJ’s Decision

On January 26, 2018, Plaintiff filed a Title II application for disability insurance benefits. (AR 235-236). Plaintiff’s application was denied and, after reconsideration, was denied again. (AR 97-113, 114-130). Plaintiff then filed a request for a hearing before an Administrative Law Judge

1 (“ALJ”). (AR 144-147). A hearing convened on June 18, 2019, before ALJ Jane M. Maccione
2 was postponed to allow Plaintiff to retain counsel. (AR 81-96). On November 12, 2019, the
3 assigned ALJ, Ms. Maccione, held a hearing; Plaintiff and her counsel attended, as did vocational
4 expert Nancy Rynd. (AR 49-80). The ALJ issued her decision on November 27, 2019, finding
5 Plaintiff not disabled. (AR 26-48). On August 11, 2020, the Appeals Council found no basis for
6 changing the ALJ’s decision. (AR 6-12, 231-234). Thereafter, following the Appeals Council’s
7 grant of an extension of time (AR 1-3), Plaintiff filed the instant action.

8 In her decision, the ALJ used the five-step sequential evaluation process promulgated by
9 the Social Security Administration for determining whether an individual is disabled. (AR 30-31)
10 (citing 20 C.F.R. 404.1520a). The ALJ found that Plaintiff had not engaged in substantial gainful
11 activity since January 13, 2016, the alleged onset date. The ALJ concluded that Plaintiff had the
12 following severe impairments: disc protrusion and multilevel arthritis of the cervical spine; lumbar
13 spine disorder status post surgery; bilateral trochanteric bursitis; osteoarthritis of the bilateral hips;
14 chronic vertigo; and migraine headaches. The ALJ also found that, beginning June 1, 2018,
15 Plaintiff had the following additional severe impairments: rheumatoid arthritis; fibromyalgia; and
16 cervical radiculopathy. (AR 31).

17 The ALJ noted that Plaintiff also had the following non-severe impairments: osteoarthritis
18 of the bilateral hands, depression, and anxiety. (AR 31-34). After identifying these impairments,
19 the ALJ found that Plaintiff did not have an impairment, or any combination of impairments, that
20 meets or medically equals the severity of one of the listed impairments in 20 C.F.R. Part 404,
21 Subpart P, Appendix 1. (AR 34).

22 The ALJ reached this determination by considering the four broad functional areas of
23 mental functioning listed in the “paragraph B” criteria.¹ The first functional area is understanding,

24 ¹ The “paragraph B criteria” evaluates mental impairments in the context of four broad areas of
25 functioning: (1) understanding, remembering, or applying information; (2) interacting with others; (3)
26 concentrating, persisting, or maintaining pace; and (4) adapting or managing oneself. 20 C.F.R. § Pt. 404,
27 Subpt. P, App. 1. The severity of the limitation a claimant has in each of the four areas of functioning is
28 identified as either “no limitation,” “mild,” “moderate,” “marked,” or “extreme.” *Id.* To satisfy the
paragraph B criteria, a claimant must have an “extreme” limitation in at least one of the areas of mental
functioning, or a “marked” limitation in at least two of the areas of mental functioning. *Id.* An “extreme”
limitation is the inability to function independently, appropriately, or effectively, and on a sustained
basis. *Id.* A “marked” limitation is a seriously limited ability to function independently, appropriately, or

1 remembering, or applying information. The second functional area is interacting with others. The
2 third functional area is concentrating, persisting, or maintaining pace. The fourth functional area
3 is adapting or managing oneself. The ALJ found that Plaintiff had no limitations in the first two
4 functional areas and mild limitations in the third and fourth functional areas. (AR 32-33). Next,
5 the ALJ discussed the opinion of psychologist Kelly T. Pham, who conducted a mental consultative
6 examination of Plaintiff on April 4, 2018. The ALJ found as follows:

7 Kelly T. Pham, Ph.D., who conducted the mental consultative
8 examination on April 4, 2018, concluded that the claimant had an
9 adequate ability to perform simple and complex tasks, maintain
10 regular attendance, work without special or additional supervision,
11 accept instructions from supervisors, and interact with others. Dr.
12 Pham also stated that the claimant's ability to perform work
13 activities on a consistent basis, complete a normal workday or
14 workweek, and deal with usual work stress was no more than mildly
15 to moderately limited. The undersigned finds that this opinion
allowing the claimant to perform some work is largely persuasive
because it is supported by the adequate mental functioning that the
claimant exhibited at Dr. Pham's examination. In addition, the
opinion is supported by the neuropsychological test results showing
average intellectual and memory function.

16 Moreover, the opinion is consistent with the claimant's generally
17 adequate daily living activities, her adequate social activities, and
18 her Hawaii trip and volunteer work in 2018, which indicate some
19 mental capacity. Furthermore, Dr. Pham has specialized expertise
20 on mental impairments and the opinion is based upon objective
21 testing and a thorough in-person evaluation of the claimant.
22 However, the opinion somewhat understates the claimant's ability
23 to perform work activities on a consistent basis, complete a normal
24 workday or workweek, and deal with usual work stress. This
25 portion of the opinion is not persuasive because it is inconsistent
with the claimant's generally adequate mental functioning
documented in the treatment records. Also, there is little evidence
that the claimant has had any trouble showing up for medical
appointments. Finally, the claimant has received little specialized
mental health treatment, such as counseling or psychotherapy, since
the alleged disability onset date. She did not have a psychiatric
evaluation until October 2019. There is no definitive evidence that

26 effectively, and on a sustained basis. *Id.* A "moderate" degree of mental limitation means that functioning
27 in this area independently, appropriately, effectively, and on a sustained basis is "fair." *Id.* And a "mild"
28 degree of mental limitation means that functioning in this area independently, appropriately, effectively, and
on a sustained basis is "slightly limited." *Id.*; see *Carlos v. Comm'r of Soc. Sec.*, 1:21-cv-00517-SAB, 2023
WL 1868870, at *4 n.7 (E.D. Cal. Feb. 9, 2023).

1 she had difficulty obtaining specialized mental health treatment as
2 necessary before October 2019.

3 (AR 33-34) (citations omitted). The ALJ also addressed the opinions of the state agency
4 psychological consultants and Plaintiff's physician Rana Rand. The ALJ found as follows:

5 The State agency psychological consultants found that the claimant
6 had moderate limitation in concentrating, persisting, and
7 maintaining pace and was limited to simple work. Rana Rand, D.O.,
8 the claimant's own physician, stated that the claimant had
9 limitations in her ability to perform activities requiring anxiety-
10 provoking social interaction. The undersigned finds that these
11 opinions understate the claimant's mental capacity and are not
12 persuasive because they are contradicted by the generally adequate
13 mental functioning that the claimant exhibited during the
14 adjudicative period, as discussed above. In addition, the opinions
15 are contradicted by the neuropsychological test results showing
16 average intellectual and memory function. Moreover, the claimant
17 has received little specialized mental health treatment, such as
18 counseling or psychotherapy, since the alleged disability onset date.
19 Furthermore, the opinions are inconsistent with the claimant's
20 generally adequate daily living activities, her adequate social
21 activities, and her Hawaii trip and volunteer work in 2018.

22 (AR 34) (citations omitted).

23 The ALJ found Plaintiff had the residual functional capacity ("RFC") to perform light work.
24 From January 13, 2016, to May 31, 2018, the ALJ found the following RFC applicable:

25 After careful consideration of the entire record, the undersigned
finds that, from January 13, 2016 through May 31, 2018, the
claimant had the residual functional capacity to perform light work
as defined in 20 CFR 404.1567(a), except she was limited to
frequent climbing of ramps and stairs; she could not climb ropes,
ladders, or scaffolds. She was limited to frequent kneeling and
crouching and to occasional stooping and crawling; she could not
balance. She was limited to occasional overhead reaching with her
bilateral upper extremities. In addition, she required protection from
workplace hazards, such as unprotected heights and dangerous
moving mechanical parts.

26 (AR 35). After summarizing the medical evidence, the ALJ determined that the Plaintiff's
27 impairments could reasonably be expected to cause some of her alleged symptoms but the intensity,
28 persistence, and limiting effects of those symptoms were not consistent with the medical evidence

1 in the record. (AR 35-38). The ALJ found persuasive the state agency medical consultants'
2 findings, except that the opinions overstated Plaintiff's ability to climb ladders, ropes, and scaffolds
3 and balance and work around hazards, as they did not adequately consider Plaintiff's subjective
4 complaints regarding her chronic vertigo. (AR 37). The ALJ then discounted some of the
5 limitations in Dr. Rand's opinion:

6 Rana Rand, D.O., the claimant's own physician, stated that the
7 claimant was limited to less than sedentary exertion, would need to
8 be allowed to change positions at will, should avoid concentrated
9 exposure to pulmonary irritants, and would be absent from work 4
10 times per month. Dr. Rand also stated that the claimant had
11 limitations in her ability to perform activities requiring sitting,
12 standing, lifting, and repetitive activities of any kind. With respect
13 to the period prior to June 2018, the undersigned finds that this
14 opinion understates the claimant's physical capacity and is not
15 persuasive because it is not supported by the doctor's own treatment
16 notes, which did not document strong findings or signs that support
17 such extreme limitations. In fact, overall, the medical records
18 documented generally normal musculoskeletal and neurologic
function. In addition, the opinion is contradicted by the cervical
spine imaging, brain imaging, and VNG, which showed no more
than mild findings. Moreover, the opinion is contradicted by the
lack of electrodiagnostic findings concerning the claimant's
radicular symptoms prior to June 2018. Furthermore, the opinion is
inconsistent with the admitted effectiveness of the claimant's
lumbar spine surgery, physical therapy, and migraine and vertigo
treatment. Finally, the opinion is inconsistent with the claimant's
admitted activities of daily living and her Hawaii trip.

19 (AR 37-38) (citations omitted). The ALJ proceeded to discuss lay witness testimony provided by
20 Plaintiff's mother:

21 The claimant's mother completed a third party function report,
22 which largely mirrors the claimant's allegations. The description of
23 the claimant's daily activities is persuasive because the observations
24 came from frequent interactions with the claimant. However, the
25 assessment of the claimant's functioning is not persuasive because
26 the claimant's friend is not an acceptable medical source and lacks
27 the medical proficiency to render a reliable opinion on the
claimant's limitations. The undersigned finds the observations and
opinions of trained medical professionals to be more persuasive. In
addition, the assessment is inconsistent with the generally normal
musculoskeletal and neurologic function documented in the medical
records.

28 (AR 38) (citation omitted). The ALJ found that Plaintiff was unable to perform any past relevant

1 work and was not disabled from the period of January 13, 2016, to May 31, 2018, and thus the
2 transferability of job skills was not material to the determination of disability. The ALJ listed office
3 clerk, furniture rental clerk, and order caller as occupations Plaintiff could perform during the
4 period from January 13, 2016, to May 31, 2018. (AR 38-39). The ALJ issued another RFC for the
5 period of June 1, 2018, to the present, finding that the previous reasons regarding the earlier period
6 continued to apply but that Plaintiff experienced new impairments after that date:

7 After careful consideration of the entire record, the undersigned
8 finds that, beginning on June 1, 2018, the claimant has the residual
9 functional capacity to perform sedentary work as defined in 20 CFR
10 404.1567(a), except she is able to lift and carry 10 pounds both
11 frequently and occasionally. Her standing and/or walking are
12 limited to 2 hours, cumulatively, during the workday. She is limited
13 to occasional climbing of ramps and stairs; she cannot climb ropes,
14 ladders, or scaffolds. She is limited to occasional balancing,
15 stooping, kneeling, crouching, and crawling. She cannot reach
16 overhead bilaterally. She is limited to frequent reaching in all other
17 directions, bilaterally. She is limited to occasional pushing and/or
18 pulling, bilaterally. She is limited to frequent fingering, bilaterally.
19 She cannot tolerate concentrated exposure to extremes of heat or
20 cold. She requires a noise environment of moderate or less. In
21 addition, she must be protected from workplace hazards, such as
22 unprotected heights and dangerous moving mechanical parts.

23 (AR 40). The ALJ determined anew that the state agency medical consultants' opinions overstated
24 Plaintiff's physical abilities and did not adequately consider her chronic vertigo. (AR 41). The
25 ALJ further discussed Dr. Rand's opinions:

26 With respect to the period beginning on June 1, 2018, Dr. Rand's
27 opinion is not persuasive. Even though the recent medical evidence
28 supports further restrictions, her physical functioning continues to
29 be adequate in general and physical therapy has been effective, as
30 discussed in detail above. In fact, beginning in late 2018, she started
31 driving short distances and doing volunteer work. The undersigned
32 has considered the diagnoses of new impairments and worsening of
33 the cervical spine disorder and has restricted the claimant to
34 sedentary exertion and assessed additional functional limitations.

35 (AR 41) (citations omitted). The ALJ concluded that, beginning June 1, 2018, Plaintiff is unable
36 to perform any past relevant work and that jobs existed in significant numbers in the national
37 economy that she could perform, providing election clerk, document preparer, and call-out
38

1 operator. (AR 42). The ALJ concluded that Plaintiff was not disabled from the alleged onset date
2 to the date of the decision. (AR 43).

3 **B. Medical Record and Hearing Testimony**

4 The relevant hearing testimony and medical record were reviewed by the Court and will be
5 referenced below as necessary to this Court's decision.

6 **II. STANDARD OF REVIEW**

7 A district court's review of a final decision of the Commissioner of Social Security is
8 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the
9 Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is
10 based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence"
11 means "relevant evidence that a reasonable mind might accept as adequate to support a
12 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence
13 equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation
14 omitted). "[I]t is such relevant evidence as a reasonable mind might accept as adequate to support
15 a conclusion." *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995) (citation omitted). In
16 determining whether the standard has been satisfied, a reviewing court must consider the entire
17 record as a whole rather than searching for supporting evidence in isolation. *Id.*

18 The court will review only the reasons provided by the ALJ in the disability determination
19 and may not affirm the ALJ on a ground upon which she did not rely. Social Security Act § 205,
20 42 U.S.C. § 405(g). In reviewing a denial of benefits, a district court may not substitute its
21 judgment for that of the Commissioner. "The court will uphold the ALJ's conclusion when the
22 evidence is susceptible to more than one rational interpretation." *Tommasetti v. Astrue*, 533 F.3d
23 1035, 1038 (9th Cir. 2008). Further, a district court will not reverse an ALJ's decision on account
24 of an error that is harmless. *Id.* An error is harmless where it is "inconsequential to the [ALJ's]
25 ultimate nondisability determination." *Id.* (quotation and citation omitted). The party appealing
26 the ALJ's decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
27 *Sanders*, 556 U.S. 396, 409-10 (2009).

28 A claimant must satisfy two conditions to be considered "disabled" and eligible for benefits

1 within the meaning of the Social Security Act. First, the claimant must be “unable to engage in any
2 substantial gainful activity by reason of any medically determinable physical or mental impairment
3 which can be expected to result in death or which has lasted or can be expected to last for a
4 continuous period of not less than twelve months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the
5 claimant’s impairment must be “of such severity that he is not only unable to do his previous
6 work[,] but cannot, considering his age, education, and work experience, engage in any other kind
7 of substantial gainful work which exists in the national economy.” 42 U.S.C. §
8 1382c(a)(3)(B).

9 The Commissioner has established a five-step sequential analysis to determine whether a
10 claimant satisfies the above criteria. *See* 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the
11 Commissioner considers the claimant’s work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant
12 is engaged in “substantial gainful activity,” the Commissioner must find that the claimant is not
13 disabled. 20 C.F.R. § 416.920(b).

14 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step
15 two. At this step, the Commissioner considers the severity of the claimant’s impairment. 20 C.F.R.
16 § 416.920(a)(4)(ii). If the claimant suffers from “any impairment or combination of impairments
17 which significantly limits [his or her] physical or mental ability to do basic work activities,” the
18 analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not
19 satisfy this severity threshold, however, the Commissioner must find that the claimant is not
20 disabled. *Id.*

21 At step three, the Commissioner compares the claimant’s impairment to impairments
22 recognized by the Commissioner to be so severe as to preclude a person from engaging in
23 substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe or more
24 severe than one of the enumerated impairments, the Commissioner must find the claimant disabled
25 and award benefits. 20 C.F.R. § 416.920(d).

26 If the severity of the claimant’s impairment does not meet or exceed the severity of the
27 enumerated impairments, the Commissioner must pause to assess the claimant’s “residual
28 functional capacity.” Residual functional capacity (RFC), defined generally as the claimant’s

1 ability to perform physical and mental work activities on a sustained basis despite his or her
2 limitations (20 C.F.R. § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's RFC, the
4 claimant is capable of performing work that he or she has performed in the past (past relevant
5 work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work,
6 the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the
7 claimant is incapable of performing such work, the analysis proceeds to step five.

8 At step five, the Commissioner considers whether, in view of the claimant's RFC, the
9 claimant is capable of performing other work in the national economy. 20 C.F.R. §
10 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational
11 factors such as the claimant's age, education, and past work experience. *Id.* If the claimant is
12 capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20
13 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the analysis
14 concludes with a finding that the claimant is disabled and is therefore entitled to benefits. *Id.*

15 The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*,
16 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the
17 Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such
18 work "exists in significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran*
19 *v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

20 **III. ISSUES AND ANALYSIS**

21 Plaintiff seeks judicial review of the Commissioner's final decision denying her application.
22 (Doc. 1). Plaintiff raises the following issues:

- 23 1. The ALJ erred by using the incorrect standard of review and improperly rejecting the
24 medical opinions of record;
- 25 2. The ALJ improperly rejected Plaintiff's symptom testimony;
- 26 3. The ALJ improperly rejected lay witness testimony; and
- 27 4. The ALJ improperly omitted medical opinion limitations, Plaintiff's symptom
28 testimony, and the lay witness testimony from the RFC and hypotheticals posed to the

1 vocational expert. (Doc. 11 at 12-20).

2 **A. Whether the ALJ Erred by Using An Incorrect Standard of Review and**
 3 **Improperly Rejecting the Medical Opinions of Record**

4 Plaintiff asserts that the ALJ improperly rejected the opinions of Plaintiff's physician Rana
 5 Rand as the record supported Dr. Rand's findings and established that Plaintiff was disabled.
 6 Plaintiff further argues that the ALJ improperly rejected the opinions of agency psychologist Kelly
 7 Pham in regard to Plaintiff's mental limitations. As to both Drs. Rand and Pham, Plaintiff asserts
 8 that the ALJ failed to provide specific and legitimate reasons for rejecting their opinions. (Doc. 11
 9 at 12-16).

10 *i. Standard of Review*

11 Plaintiff incorrectly advances a legal standard that applied in the Ninth Circuit to cases filed
 12 before March 27, 2017. Because Plaintiff filed her application for benefits after that date, Plaintiff's
 13 claim for benefits is governed by the agency's "new" regulations concerning how ALJs must
 14 evaluate medical opinions. 20 C.F.R. § 404.1520c.

15 Previously, the Ninth Circuit required ALJs to provide clear and convincing or specific and
 16 legitimate reasons for rejecting the medical opinions of treating or examining physicians. In light
 17 of the more recent, operative regulations, these standards no longer apply and the ALJ was not
 18 required to provide "specific and legitimate reasons" to discount any medical opinions. In *Woods*
 19 *v. Kijakazi*,² the Ninth Circuit explained:

20 As a threshold matter, we must decide whether recent changes to the
 21 Social Security Administration's regulations displace our
 22 longstanding case law requiring an ALJ to provide 'specific and
 23 legitimate' reasons for rejecting an examining doctor's opinion. We
 24 conclude that they do. For claims subject to the new regulations, the
 25 former hierarchy of medical opinions—in which we assign
 presumptive weight based on the extent of the doctor's relationship
 with the claimant—no longer applies. Now, an ALJ's decision,
 including the decision to discredit any medical opinion, must simply
 be supported by substantial evidence.

26 *Id.* at 787. Plaintiff cites cases for the proposition that the "specific and legitimate" standard still
 27 applies. (Doc. 11 at 12-13). These cases predate *Woods* and are, therefore, inapplicable.

28

² 32 F.4th 785 (9th Cir. 2022).

1 The operative regulations set “supportability” and “consistency” as “the most important
 2 factors” when determining a medical opinion’s persuasiveness. 20 C.F.R. § 404.1520c(b)(2).
 3 Although the regulations eliminate the “physician hierarchy,” deference to specific medical
 4 opinions, and assigning “weight” to a medical opinion, the ALJ must still “articulate how [they]
 5 considered the medical opinions” and “how persuasive [they] find all of the medical opinions.” 20
 6 C.F.R. § 404.1520c(a)–(b). In short, “the decision to discredit any medical opinion, must simply
 7 be supported by substantial evidence.” *Woods*, 32 F.4th at 787.

8 In conjunction with this requirement, “[t]he agency must ‘articulate ... how persuasive’ it
 9 finds ‘all of the medical opinions’ from each doctor or other source, and ‘explain how [it]
 10 considered the supportability and consistency factors’ in reaching these findings.” *Id.* at 792 (citing
 11 20 C.F.R. § 404.1520c(b)); *see also id.* § 416.920c(b). “Supportability means the extent to which
 12 a medical source supports the medical opinion by explaining the ‘relevant ... objective medical
 13 evidence.’” *Id.* at 791-792 (quoting 20 C.F.R. § 404.1520c(c)(1)); *see also id.* § 416.920c(c)(1).
 14 “Consistency means the extent to which a medical opinion is ‘consistent ... with the evidence from
 15 other medical sources and nonmedical sources in the claim.’” *Id.* at 792 (quoting 20 C.F.R. §
 16 404.1520c(c)(2)); *see also id.* § 416.920c(c)(2).

17 ***ii. Dr. Rand’s Opinion***

18 Dr. Rand’s opinion sets forth a number of limitations in a form dated September 10, 2019.
 19 (AR 717-719). Dr. Rand states that Plaintiff, at maximum, can lift and carry less than ten pounds
 20 on an occasional basis and less than ten pounds on a frequent basis. She can stand and walk less
 21 than two hours and sit less than two hours. (AR 717). Dr. Rand provides that Plaintiff must
 22 alternate between sitting, standing, and walking very frequently and can occasionally twist, stoop,
 23 crouch, and climb stairs but may never climb ladders. She must avoid all exposure to extreme heat,
 24 as well as heights, machinery, and other hazards, and moderate exposure to extreme cold. In
 25 assessing the limitations, Dr. Rand notes Plaintiff’s balance deficits, anxiety, metabolic issues,
 26 tremors, and pain. (AR 718-719).

27 Plaintiff asserts that Dr. Rand’s examination notes, as well as the imaging studies, document
 28 signs of carpal tunnel, significant degenerative changes in Plaintiff’s cervical and lumbar spine,

1 rheumatoid arthritis, fibromyalgia, migraines, vertigo, and anxiety. (Doc. 11 at 14). Plaintiff states
2 that surgery was effective for Plaintiff's lumbar spine, as noted by the ALJ, but did not address any
3 of Plaintiff's other impairments. Plaintiff asserts that, though physical therapy reduced the
4 frequency and severity of vertigo and migraines, it did not eliminate them such that they no longer
5 caused limitations. Lastly, Plaintiff provides that the ALJ improperly discounted Dr. Rand's
6 opinions by citing to Plaintiff's vacation to Hawaii. *Id.* at 15.

7 A review of the record supports a finding that the ALJ's discounting of Dr. Rand's
8 limitations is supported by substantial evidence. The ALJ formulated two RFCs, discussing Dr.
9 Rand's opinion in regard to each: one for the period of January 13, 2016, through May 31, 2018
10 (hereinafter the "first RFC"), and another for the period of June 1, 2018, and after (hereinafter the
11 "second RFC").

12 When discounting Dr. Rand's opinion in connection with the first RFC, the ALJ stated that
13 the opinion "understated claimant's physical capacity and is not persuasive because it is not
14 supported by the doctor's own treatment notes, which did not document strong findings or signs
15 that support such extreme limitations. In fact, overall, the medical records documented generally
16 normal musculoskeletal and neurologic function." (AR 37) (citing Exhibits 1F, 2F, 3F, 4F, 9F,
17 13F, and 17F). The ALJ continued, noting that the opinion "is contradicted by the cervical spine
18 imaging, brain imaging, and VNG, which showed no more than mild findings." (AR 38) (citing
19 Exhibits 1F, 2F, and 17F). Next, the ALJ found that the opinion was "contradicted by the lack of
20 electrodiagnostic findings concerning the claimant's radicular symptoms prior to June 2018 ...
21 [and] with the admitted effectiveness of the claimant's lumbar spine surgery, physical therapy, and
22 migraine and vertigo treatment." (AR 38) (citing Exhibits 1F, 2F, 3F, 15F, 17F, and Plaintiff's
23 hearing testimony). Lastly, the ALJ noted that the opinion was "inconsistent with the claimant's
24 admitted activities of daily living and her Hawaii trip." (AR 38) (citing Exhibits 4E, 7F, 9F, and
25 Plaintiff's hearing testimony).

26 Later in her decision, concerning the second RFC, the ALJ found that the above reasons
27 continued to apply, except that Plaintiff had been "diagnosed with new impairments and her
28 cervical spine disorder has progressed." The ALJ noted that Plaintiff had been diagnosed with

1 rheumatoid arthritis and fibromyalgia, which caused pain, tenderness, and fatigue; had begun
2 receiving methotrexate injections; had elevated inflammatory markers; evidenced significant
3 neuropathy in her upper extremities; and presented with moderate to severe foraminal stenosis and
4 mild to moderate spinal stenosis. (AR 40).

5 Regarding Dr. Rand's limitations, the ALJ found them unpersuasive. She noted that
6 "though the recent medical evidence supports further restrictions, her physical functioning
7 continues to be adequate in general and physical therapy has been effective, as discussed in detail
8 above ... she started driving short distances and doing volunteer work." The ALJ "restricted the
9 claimant to sedentary exertion and assessed additional functional limitations." (AR 41).

10 The record evidences numerous clinical visits and procedures regarding Plaintiff's back in
11 2016 and 2017. For example, Plaintiff had a computed tomography ("CT") scan of her neck on
12 June 20, 2016, with largely unremarkable findings aside from mild degenerative disc disease. (AR
13 468). Plaintiff had a CT scan of her cervical spine on September 28, 2016, finding no fracture after
14 a fall. (AR 454). That same day, she had a scan of her thoracic spine, finding no fracture and a
15 mild acute compression deformity, and a scan of her lumbar spine, with no findings. (AR 456-
16 457). Plaintiff had an MRI of her lumbar spine on January 29, 2017, with largely unremarkable
17 and mild findings. (AR 447). Plaintiff had an MRI of her cervical spine on April 28, 2017, finding
18 small central disc protrusions and foraminal narrowing. (AR 434-435). Plaintiff had lumbar
19 surgery on July 20, 2017, with the record noting Plaintiff had failed all conservative treatment. (AR
20 357-358).

21 Other records from 2017 evidence Plaintiff experiencing severe migraines, dizzy spells, and
22 vertigo. For example, on February 6, 2017, she presented to physician Stephen C. Lee with
23 dizziness and impaired balance; an MRI scan of her head was normal. (AR 348-349). On May 1,
24 2017, Dr. Lee noted that Plaintiff's dizziness had not improved and that Imitrex injections worked
25 well for her. A CT scan of her head and videonystagmography ("VNG") test were normal. (AR
26 346). On July 12, 2017, Dr. Lee noted that the headaches were less frequent and Imitrex injections
27 and Topamax tablets worked well. (AR 343). On December 13, 2017, Dr. Lee noted that the
28 Imitrex injections worked well, but Plaintiff continued to experience migraines, vertigo, and

1 nausea. (AR 341).

2 Starting late-2017, Plaintiff received physical therapy which resulted in notable
3 improvement. She was seen for thirteen therapy visits from September 12, 2017, to January 15,
4 2018. She had “been making good progress” on her back but did not start on her balance issues.
5 She was discharged on May 30, 2018, for missing four appointments. (AR 817). She began therapy
6 again on July 30, 2018. (AR 810-816). On December 10, 2018, physical therapist Anne B. Jacobs
7 recorded that Plaintiff felt she had “made a lot of improvement,” and that her balance, headaches,
8 and visual symptoms had improved, though she continued to have anxiety but felt she had more
9 control over it. Dr. Jacobs noted that Plaintiff had begun driving short distances with her husband
10 and had “volunteered a few days at work.” (AR 792-793). On August 5, 2019, Plaintiff reported
11 a reduction of pain and tension in her periscapular region. (AR 787). Physical therapist Edward J.
12 Leers noted that Plaintiff’s headaches were reduced to one per week but that she continued to
13 experience pain in her neck, hips, and back. (AR 783). Dr. Leers prepared the second most recent
14 physical therapy note in the record, dated September 17, 2019, where he recounted that Plaintiff
15 expressed she “has no concerns about her balance, it has improved greatly and she has had previous
16 course of therapy to work on balance with good result.” (AR 781).

17 The ALJ referenced Plaintiff’s activities of daily living and her vacation to Hawaii when
18 discounting Dr. Rand’s opinions. (AR 38). An ALJ properly may consider a plaintiff’s reported
19 activities in evaluating the persuasiveness of medical opinions. *See Leonard v. Comm’r of Soc.*
20 *Sec.*, No. 1:21-cv-00627-EPG, 2022 WL 4123990, at *4 (E.D. Cal. Sept. 9, 2022) (“when
21 considered in conjunction with the rest of the ALJ’s reasoning, the ALJ’s reliance on Plaintiff’s
22 daily activities—caring for her cat, preparing simple meals, cleaning, and sometimes administering
23 her father’s insulin, etc.—is a reasonable basis to discount the severe limitations assessed [in a
24 medical opinion]”).

25 The record does not provide any significant detail regarding Plaintiff’s vacation to Hawaii,
26 appearing only briefly, for example in a medical record dated April 11, 2018. (AR 660). However,
27 the ALJ did not rely solely on Plaintiff’s Hawaii trip or daily activities but included them as an
28 additional reason to discount Dr. Rand’s opinions, after discussing the medical record evidence.

1 As discussed above, the ALJ evaluated numerous other factors as well, such as extensive medical
2 records relating to Plaintiff's course of treatment over the years, and her back surgery, imaging
3 results, and physical therapy. This analysis comports with the applicable standards setting forth
4 "supportability" and "consistency" as the most important factors when evaluating opinions in the
5 record. *See* 20 C.F.R. § 404.1520c(b)(2).

6 The ALJ did not reject Dr. Rand's limitations wholesale but, rather, concluded that the
7 limitations therein understated Plaintiff's abilities, and accordingly, incorporated certain
8 restrictions into the RFC consistent with her analysis. As such, the ALJ's discounting of Dr. Rand's
9 limitations is supported by substantial evidence.

10 ***iii. Dr. Pham's Opinion***

11 Dr. Pham found that Plaintiff is "mildly to moderately limited" in her ability to perform
12 work activities on a consistent basis, her ability to complete a normal workday or workweek without
13 interruptions, and her ability to deal with the usual stresses encountered in a competitive work
14 environment. Dr. Pham found that Plaintiff is "not significantly limited to mildly limited" in her
15 ability to maintain regular attendance in the workplace. And Dr. Pham found that Plaintiff is "not
16 significantly limited" in her ability to understand, remember, and perform simple and complex
17 written and oral instructions; her ability to perform work activities without special or additional
18 supervision; her ability to accept instructions from supervisors; and her ability to interact with
19 coworkers and with the public. (AR 637-638).

20 The ALJ found Dr. Pham's opinion largely persuasive, supported by the findings in Dr.
21 Pham's examination and its neuropsychological test results, particularly when considering Dr.
22 Pham's specialized expertise regarding mental impairments. The ALJ also found the opinion
23 consistent with Plaintiff's daily activities. (AR 33-34). However, the ALJ concluded that the
24 opinion somewhat understated Plaintiff's ability to perform consistent work activities, complete a
25 normal workday or workweek, and deal with usual workplace stress. The ALJ found that:

26 This portion of the opinion is not persuasive because it is
27 inconsistent with the claimant's generally adequate mental
28 functioning documented in the treatment records. Also, there is little
evidence that the claimant has had any trouble showing up for
medical appointments. Finally, the claimant has received little

1 specialized mental health treatment, such as counseling or
2 psychotherapy, since the alleged disability onset date. She did not
3 have a psychiatric evaluation until October 2019. There is no
4 definitive evidence that she had difficulty obtaining specialized
5 mental health treatment as necessary before October 2019.

6 (AR 34) (citations omitted).

7 Regarding the ALJ's finding Plaintiff had "little" specialized mental health treatment,
8 Plaintiff asserts that she did, in fact, have mental health treatment, including medications from her
9 primary care doctors. She argues that an "ability to attend medical appointments does not
10 demonstrate an ability to attend work on a regular and continuing basis for 5 days per week, 8 hours
11 per day, or an equivalent schedule. It does not show an ability to remain in the workplace for a full
12 day." She states that, thus, the ALJ failed to meet the relevant standard for rejecting the opinion of
13 Dr. Pham. (Doc. 11 at 15-16).

14 Concurrent with her evaluation of Dr. Pham's opinion, the ALJ considered the "paragraph
15 B" criteria, finding Plaintiff had "mild" limitations in the functional areas of concentrating,
16 persisting, or maintaining pace and in adapting or managing herself, with no limitations in
17 understanding, remembering, or applying information and in interacting with others. (AR 32-33).
18 In her discussion, the ALJ provided further citations regarding adequate mental functioning
19 documented in the treatment records. (AR 33) (citing Exhibits 1F, 2F, 3E, 3F, 4E, 4F, 7F, 9F, 10F,
20 12F, 13F, 16F, and 18F).

21 Here, the record evidences Plaintiff being prescribed with medication to manage her
22 depression and anxiety. For example, a record dated February 6, 2017, and signed by Dr. Lee notes
23 that Plaintiff took Zoloft, diazepam, and gabapentin. (AR 348). Another dated May 17, 2017,
24 notes that Zoloft did not help Plaintiff's depression and she began Cymbalta. (AR 345). Another
25 from June 15, 2017, notes that she was switching to Lexapro. (AR 344). Later, on October 18,
26 2018, Dr. Rand noted that that Plaintiff was being referred back to family nurse practitioner Sara
27 Walsh for "consideration of anxiety treatment," noting that counseling was recommended. (AR
28 742). On November 30, 2018, Dr. Rand prescribed a trial of over-the-counter supplement Relora.
(AR 738). On July 19, 2019, Dr. Rand noted that Plaintiff recently began lorazepam, which

1 provided mild benefit. (AR 731). She notes that Plaintiff takes venlafaxine and previously took
2 Cymbalta in 2017 and, prior to that, Zoloft. (AR 734).

3 However, the record supports the ALJ's citations as to Plaintiff's affect and behavior during
4 appointments, as well as lack of counseling or therapy. (*See, e.g.*, AR 397, 401, 408, 415, 426, 560,
5 564, 570, 573, 576, 580, 586, 590, 596, 599, 655, 658, 664, 725, 729, 741, 793, 866, 870, 876, 880–
6 881, 884, 887).

7 State agency physician F. Mateus found that Plaintiff had only mild limitations in
8 understanding, remembering, or applying information; interacting with others; and adapting or
9 managing oneself, as well as moderate limitations in concentrating, persisting, or maintaining pace.
10 (AR 105). Dr. Mateus concluded Plaintiff's "main problem is physical" and that she "retained the
11 ability to sustain simple and detailed but not complex tasks within her physical tolerance." (AR
12 105-106). In the mental residual functional capacity assessment, Dr. Mateus notes that Plaintiff is
13 "mentally capable of sustaining at least simple tasks within her physical tolerance" and that her
14 "main problem is physical." (AR 110). Upon reconsideration, state agency psychologist Janet
15 Anguas-Keiter found substantially the same limitations. (AR 122, 127).

16 The ALJ accurately cited the record when noting that Plaintiff did not have any psychiatric
17 evaluation or consultation until one was scheduled for October 2, 2019. (AR 32, 34; *see* AR 721).
18 Dr. Rand noted on August 29, 2019, that Plaintiff was willing to see a psychiatrist for further
19 evaluation of her anxiety, and had seen one once after a suicide attempt, noting that Plaintiff had
20 no suicidal ideation or intention at the time. (AR 724). On September 10, 2019, Dr. Rand noted
21 that Plaintiff's PHQ-9 score had increased from 12 to 16, but that Plaintiff did not endorse worsened
22 mood nor any suicidal ideation or intention. (AR 722-723).

23 As such, the ALJ's discounting of Dr. Pham's limitations is supported by substantial
24 evidence. *See Perez v. O'Malley*, No. 2:23-CV-00396-JDP (SS), 2024 WL 1095762, at *6–7 (E.D.
25 Cal. Mar. 13, 2024) (finding substantial evidence supported the ALJ's rejection of moderate and
26 marked limitations where "plaintiff's mental status examinations yielded mostly normal results and
27 that his overall mental health care primarily consisted of medication management" and after
28 plaintiff stopped attending "counseling in March 2018, there are no records of any further

1 psychiatric care that involved consistent, significant treatment with a mental health professional”).

2 Insofar as Plaintiff advances another rational interpretation of the record, “[w]here evidence
3 is susceptible to more than one rational interpretation, the ALJ’s decision should be upheld.” *Orn*
4 *v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (quotation omitted).

5 **B. Whether the ALJ Erred by Improperly Rejecting Plaintiff’s Symptom Testimony**

6 An ALJ engages in a two-step analysis when evaluating a claimant’s testimony regarding
7 subjective pain or symptoms. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007). The
8 ALJ must determine whether there is “objective medical evidence of an underlying impairment
9 which could reasonably be expected to produce the pain or other symptoms alleged.” *Id.*
10 (quotations omitted). “The claimant is not required to show that this impairment could reasonably
11 be expected to cause the severity of the symptom he has alleged; he need only show that it could
12 reasonably have caused some degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th
13 Cir. 2009) (internal quotation marks omitted).

14 Second, “[i]f the claimant meets the first test and there is no evidence of malingering, the
15 ALJ can only reject the claimant’s testimony about the severity of the symptoms if [the ALJ] gives
16 specific, clear and convincing reasons for the rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163
17 (9th Cir. 2014) (internal citations and quotations omitted). “General findings are insufficient;
18 rather, the ALJ must identify what testimony is not credible and what evidence undermines the
19 claimant’s complaints.” *Id.*; see *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he
20 ALJ must make a credibility determination with findings sufficiently specific to permit the court to
21 conclude that the ALJ did not arbitrarily discredit claimant’s testimony.”).

22 However, “[t]he standard isn’t whether [the] court is convinced, but instead, whether the
23 ALJ’s rational is clear enough that it has the power to convince.” *Smartt v. Kijakazi*, 53 F.4th 489,
24 499 (9th Cir. 2022). An ALJ’s reasonings as to subjective testimony “must be supported by
25 substantial evidence in the record as a whole.” *Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th Cir.
26 1995); see *Carmickle v. Comm’r, SSA*, 533 F.3d 1155, 1161 (9th Cir. 2008) (“Accordingly, our
27 next task is to determine whether the ALJ’s adverse credibility finding of Carmickle’s testimony is
28 supported by substantial evidence under the clear-and-convincing standard.”).

1 Plaintiff asserts that the ALJ cited the medical evidence of record “generally as being
2 inconsistent with the degree of impairment Plaintiff alleged, but does not identify specific aspects
3 of Plaintiff’s testimony which are actually inconsistent with any specific portion of the medical
4 record.” (Doc. 11 at 17). Defendant counters that the ALJ did, in fact, identify specific testimony
5 and evidence of record that was inconsistent with Plaintiff’s symptom testimony. (Doc. 15 at 12-
6 17).

7 The ALJ found as follows:

8 The claimant complains of chronic neck and back pain that radiates
9 to the upper and lower extremities, respectively, causing pain,
10 numbness, and weakness. She also complains of bilateral hip pain,
11 dizziness, and migraine headaches. She allegedly has difficulties
12 with physical exertion, postural activities, reaching, and sleep. She
13 allegedly needs to nap or rest often throughout the day. Her
14 medications cause drowsiness, sleepiness, and nausea. After careful
15 consideration of the evidence, the undersigned finds that the
16 claimant’s medically determinable impairments could reasonably be
17 expected to cause the alleged symptoms; however, the claimant’s
18 statements concerning the intensity, persistence and limiting effects
19 of these symptoms are not entirely consistent with the medical
20 evidence and other evidence in the record for the reasons explained
21 below.

22 (AR 35) (citation omitted).

23 The ALJ first discussed the record evidence in regard to Plaintiff’s cervical spine, finding
24 that she “generally demonstrated a normal range of motion in the cervical spine,” that there was
25 “little evidence that any surgical intervention has been recommended,” and that the record reflected
26 that “she made good progress with physical therapy.” (AR 36) (citing Exhibits 1F, 2F, 4F, 9F, 13F,
27 15F, 17F).

28 The ALJ then discussed Plaintiff’s lumbar spine, finding that she “generally demonstrated
a normal range of motion in the lumbar spine.” The ALJ noted that Plaintiff “exhibited normal
neurologic function,” that she underwent lumbar spine surgery in July 2017 which appeared to be
successful, that lumbar imagery showed positive results, that she had made significant progress
with physical therapy with resulting improvement in back and leg pain, and that there was “little
evidence that she required any assistive device for ambulation on an ongoing basis,” rather that she

1 “generally had a normal gait and could ambulate without assistance.” (AR 36) (citing Exhibits 1F,
2 2F, 3F, 4F, 9F, 13F, 14F, 15F, 17F).

3 Next, the ALJ discussed Plaintiff’s hips, finding that she “generally demonstrated normal
4 ranges of motion in the hips and adequate strength in the lower extremities. The ALJ noted that
5 there was “little evidence that any surgical intervention has been recommended for her hip
6 osteoarthritis” and “that she required any assistive device for ambulation on an ongoing basis ...
7 prior to June 2018, she generally had a normal gait and could ambulate without assistance.” (AR
8 36) (citing Exhibits 2F, 3F, 4F, 7F, 9F, 13F, 17F). Additionally, the ALJ included “sedentary work”
9 as a limitation in the RFC. (AR 40).

10 Turning to migraine headaches, the ALJ found that Plaintiff’s headaches “admittedly have
11 been under adequate control since she learned how to manage them in physical therapy.” (AR 36)
12 (citing Exhibit 15F). As to vertigo, the ALJ found similarly, namely that Plaintiff’s vertigo
13 “admittedly has significantly improved since she learned how to manage it in physical therapy.”
14 (AR 37) (citing Exhibit 15F and AR 63).

15 While the ALJ’s analysis set forth above is properly supported, the ALJ did not mention
16 Plaintiff’s need to nap or rest often through the day nor the side effects of Plaintiff’s medications –
17 namely drowsiness, sleepiness, and nausea – when evaluating her symptom testimony. The ALJ’s
18 opinion is devoid of any basis (whether specific, clear, convincing, or otherwise) for her rejection
19 of this testimony. Nor does Defendant address this in briefing. (*See* Doc. 15). As such, the ALJ
20 did not clearly set forth what evidence undermines these complaints.

21 The only language that the ALJ includes in her opinion that arguably pertains to these
22 complaints is as follows:

23 The claimant has described daily activities that are not limited to the
24 extent one would expect, given the complaints of disabling
25 symptoms and limitations. Despite her physical impairments, she is
26 essentially independent in personal care and is able to prepare
27 simple meals, perform light housework, do laundry, and help take
28 care of pets. In addition, despite the allegations of symptoms and
limitations preventing all work, the record reflects that she went on
a trip to Hawaii in early 2018. Although trips and disability are not
necessarily mutually exclusive, long-distance travel typically
requires some physical capacity to prepare and execute.

(AR 37) (citations omitted). However, the ALJ mentions only “physical impairments” and “allegations of symptoms and limitations preventing all work.” Thus, it is unclear if the ALJ is addressing Plaintiff’s symptom testimony regarding drowsiness, sleepiness, nausea, and her need to nap or rest. Because the language is unspecific and general. Additionally, even if the undersigned were to assume that the ALJ is addressing such testimony, merely citing Plaintiff’s general daily activities and her trip to Hawaii, without any further elaboration, does not meet the applicable standard required to reject Plaintiff’s symptom testimony. *See Varney v. Sec’y of Health & Hum. Servs.*, 846 F.2d 581, 585 (9th Cir. 1988) (holding that when a plaintiff testifies she is experiencing a side effect known to be associated with a particular medication, the ALJ may disregard the testimony only if she “support[s] that decision with specific findings similar to those required for excess pain testimony ...”).

Though the ALJ may properly reject Plaintiff’s testimony by citing daily activities that contradict her testimony,³ it is unclear how activities such as preparing simple meals, performing light housework, doing laundry, taking care of pets, and a one-time trip to Hawaii discredit symptom testimony regarding drowsiness, sleepiness, nausea, and a need to nap or rest in regards to Plaintiff’s ability to work. *See Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) (“the mere fact that a plaintiff has carried on certain daily activities, such as grocery shopping, driving a car, or limited walking for exercise, does not in any way detract from her credibility as to her overall disability”); *see also Donna C. v. Comm’r, Soc. Sec. Admin.*, No. 1:23-CV-01513-MC, 2024 WL 4528190, at *4 (D. Or. Oct. 17, 2024) (finding where ALJ improperly rejected plaintiff’s testimony about gabapentin making her tired and sleepy, the ALJ was required to “support the decision with specific findings ... side-effects may significantly impact an individual’s ability to function at work,” thus an ALJ must “consider side effects of medication ... when assessing allegations of disabling symptoms”) (quotations omitted) (citing *Varney*, 846 F.2d at 585-586, and 20 C.F.R. § 416.929(c)(3)(iv)).

The ALJ expressly concluded that Plaintiff’s medically determinable impairments could reasonably be expected to cause these alleged symptoms, including drowsiness, sleepiness, nausea,

³ *See Orn*, 495 F.3d at 639.

1 and a need to nap or rest. (AR 35; *see* AR 61, 65-66). As such, the ALJ was required to give clear
 2 and convincing reasons to reject this symptom testimony. As to these complaints, the ALJ failed
 3 to reject Plaintiff's symptom testimony under the applicable standard. The Court cannot determine
 4 what evidence undermines the Plaintiff's complaints nor conclude that the ALJ did not arbitrarily
 5 discredit Plaintiff's testimony. Additionally, as discussed further in subsection (D) (*infra*), this
 6 error was not harmless as inclusion of limitations resulting from such symptom testimony may have
 7 altered the RFC and resulted in different hypotheticals posed to the vocational expert. *See Donna*
 8 *C., supra*, 2024 WL 4528190.

9 **C. Whether the ALJ Erred by Improperly Rejecting Lay Witness Testimony**

10 Plaintiff argues that the ALJ failed to give specific and legitimate reasons germane to the
 11 testimony of lay witness Sherry Linn Robbins, the Plaintiff's mother, when rejecting her testimony.
 12 (Doc. 11 at 18-20). The parties disagree as to the applicable standard required when rejecting such
 13 testimony. (*See* Doc. 15 at 17-21).

14 Ms. Robbins completed a function report on February 6, 2018. (AR 279-286). The ALJ
 15 found that the "the assessment of the claimant's functioning is not persuasive because the
 16 claimant's friend is not an acceptable medical source and lacks the medical proficiency to render a
 17 reliable opinion on the claimant's limitations." The ALJ found the "observations and opinions of
 18 trained medical professionals to be more persuasive. In addition, the assessment is inconsistent
 19 with the generally normal musculoskeletal and neurologic function documented in the medical
 20 records." (AR 38) (citations omitted).

21 The undersigned notes that, at the time of the parties' briefing, it was an "open question
 22 whether ALJs are still required to consider lay witness evidence under the revised regulations,"
 23 although it is settled an ALJ need not articulate her consideration of such evidence in a decision.
 24 *Fryer v. Kijakazi*, No. 21-36004, 2022 WL 17958630, at *3 n.1 (9th Cir. Dec. 27, 2022). In the
 25 recent case of *Hudnall v. Dudek*,⁴ the Ninth Circuit clarified that nonmedical sources, to include
 26 lay testimony from friends and family, are still to be considered in determining the consistency of
 27 medical opinions or prior administrative medical findings; nonetheless, the regulations expressly

28 ⁴ 130 F.4th 668 (9th Cir. 2025).

1 allow ALJs to discount nonmedical evidence without any explanation. *Id.* at 670-71. However,
2 the Ninth Circuit later withdrew the *Hudnall* decision. *Hudnall v. Dudek*, 133 F.4th 968 (9th Cir.
3 2025); *see Hudnall v. Dudek*, No. 23-3727, 2025 WL 1379101, at *1 (9th Cir. May 13, 2025)
4 (declining to resolve the issue of standard applicable to an ALJ’s review of nonmedical testimony).
5 As such, it appears the consideration of lay witness evidence under the revised regulations is again
6 an open question. Defendant asserts that Plaintiff cites caselaw predating the revised regulations
7 and that the line of cases requiring ALJs to “articulate germane [reasons] should not survive,
8 because it conflicts with express language in the revised regulations ...” (Doc. 15 at 19-20). As
9 discussed below, the Court need to not resolve this dispute here.

10 Ms. Robbins describes Plaintiff’s limitations as “vertigo, dizziness, excessive falling
11 down – neck swelling, back surgery, migraine headaches, [traumatic] head injury, concussion [and]
12 coning of [eyes].” (AR 279). She states that Plaintiff’s conditions “usually [put] her back to bed,
13 [especially] with side effects with the medications [prescribed].” She mentions, under question 14
14 asking of conditions affecting Plaintiff’s sleep: “sleep disorder” and “nauseous.” (AR 280). She
15 lists “drowsiness” as a side effect of Plaintiff’s medications. (AR 286).

16 The Ninth Circuit holds that an ALJ is not required provide specific reasoning when
17 rejecting lay witness testimony where such testimony was similar to the Plaintiff’s own subjective
18 complaints, which the ALJ provided clear and convincing reasons for rejecting. *See Valentine v.*
19 *Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009) (“the ALJ provided clear and
20 convincing reasons for rejecting [plaintiff’s] own subjective complaints, and because [the lay
21 witness’] testimony was similar to such complaints, it follows that the ALJ also gave germane
22 reasons for rejecting [the lay witness’] testimony”).

23 Here, the ALJ provided clear and convincing reasons to reject a portion of Plaintiff’s
24 subjective complaints. *See Andreha Nicole U. v. King*, No. 1:24-CV-00136-DCN-REP, 2025 WL
25 697178, at *12 (D. Idaho Feb. 5, 2025), *report and recommendation adopted*, No. 1:24-CV-00136-
26 DCN-REP, 2025 WL 693184 (D. Idaho Mar. 4, 2025) (“As long as the ALJ gives legally sufficient
27 reasons for rejecting the Petitioner’s testimony, the ALJ need only point to those reasons when
28 rejecting similar testimony by a lay witness.”) (quotations and citations omitted).

1 However, the ALJ did not provide clear and convincing reasons to reject Plaintiff's
2 testimony regarding sleepiness, drowsiness, nausea, and a need to nap or rest, as explained above
3 in subsection (B). As such, the ALJ cannot point to any such reasons to reject the lay witness
4 testimony of Ms. Robbins regarding said complaints.

5 Another judge of this Court recently has credited Defendant's interpretation of the revised
6 regulations. See, e.g., *Gausling v. Comm'r of Soc. Sec.*, No. 2:24-CV-0301-DMC, 2025 WL
7 347280, at *11 (E.D. Cal. Jan. 30, 2025) ("The Court agrees with the Commissioner that the new
8 regulatory framework requires an ALJ to consider lay testimony but does not necessarily require
9 her to articulate how she considered it."). The *Gausling* court found that the ALJ did consider lay
10 witness testimony because the ALJ summarized such testimony within her report. In contrast here,
11 there is no such summary from the ALJ which includes mention of Ms. Robbins' testimony of
12 "sleep disorder," "nauseous," and "drowsiness." (See AR 38).

13 Thus, the undersigned need not decide whether the ALJ was required by Ninth Circuit
14 precedent to provide germane reasons in rejecting said testimony, or whether the revised regulations
15 only required the ALJ to consider such testimony, as the ALJ failed to meet either standard. Cf.
16 *Fryer*, 2022 WL 17958630, at *3 n.1 ("We need not address" the extent to which an ALJ must
17 consider lay witness testimony because "[i]t is clear the ALJ evaluated Fryer's husband's function
18 reports, as he references the reports elsewhere in the decision.").

19 **D. Whether the ALJ Improperly Omitted Medical Opinion Limitations, Plaintiff's**
20 **Symptom Testimony, and Lay Witness Testimony from the RFC and**
21 **Hypotheticals Posed to the Vocational Expert**

22 Plaintiff asserts that the ALJ omitted limitations assessed by the record in the hypotheticals
23 she posed to the vocational expert and, as such, the testimony from the expert regarding Plaintiff's
24 ability to perform the provided occupations has no evidentiary value and is, thus, without
25 substantial evidence. (Doc. 11 at 20).

26 It is the ALJ's responsibility to translate a plaintiff's condition and limitations into an RFC
27 that "adequately captures restrictions" to the Plaintiff's ability to work. *Stubbs-Danielson v. Astrue*,
28 539 F.3d 1169, 1174 (9th Cir. 2008). An RFC that fails to include all of a plaintiff's credible

1 limitations and any subsequent opinion of a vocational expert is “incomplete.” *See Bagby v.*
2 *Comm’r Soc. Sec.*, 606 Fed. Appx. 888, 890 (9th Cir. 2015). An ALJ need not use the same
3 language as the medical opinion setting forth the limitations, as long as the RFC sufficiently
4 accounts for the limitations. *See Stubbs-Danielson*, 539 F.3d at 1173-1174. When determining a
5 plaintiff’s limitations, the ALJ must consider all factors that might have a significant impact on her
6 ability to work, including the side effects of medication. *Erickson v. Shalala*, 9 F.3d 813, 817–818
7 (9th Cir. 1993).

8 As noted above in subsection (A), the ALJ rejected certain limitations in the opinions of
9 Drs. Rand and Pham with substantial evidence. It follows that she need not have included them in
10 her posed hypotheticals. As to Plaintiff’s symptom testimony and lay witness testimony, as noted
11 above in subsections (B) and (C), the ALJ provided clear and convincing reasons for rejecting a
12 portion of Plaintiff’s complaints, and accordingly the corresponding lay witness testimony, but
13 failed to do so in regard to Plaintiff’s testimony relating to sleepiness, drowsiness, nausea, and a
14 need to nap or rest. Regarding said complaints, since the ALJ erred in rejecting them by not
15 providing identifiable reasoning, the ALJ may have erred in failing to pose them to the vocational
16 expert.

17 On this point, the case of *Burger v. Astrue*⁵ is instructive. The *Burger* court noted that the
18 plaintiff testified at the hearing that she was often sleepy due to the medication she takes and
19 sometimes had digestive issues, which could also be side effects from the medication. The court
20 found that the ALJ mischaracterized the evidence and committed legal error in rejecting said
21 testimony when determining the RFC, which was not supported by substantial evidence. The court
22 further found that the vocational expert’s testimony, based on the faulty RFC, had no evidentiary
23 value. As a result, the court remanded the action.

24 Here, a review of the hearing transcript evidences that the ALJ did not provide specific
25 limitations related to sleepiness, drowsiness, nausea, and a need to nap or rest. The ALJ posed a
26 hypothetical including a limitation where an individual would be inconsistent in her production
27 pace or be unable to keep up with a normal production pace. The vocational expert concluded that,

28 ⁵ 536 F. Supp. 2d 1182 (C.D. Cal. 2008).

1 in her opinion, such an individual would not be able to maintain competitive employment. (AR
 2 78). Plaintiff's counsel posed a hypothetical where an individual would miss work "about four
 3 times per month." The vocational expert concluded that such an individual could not maintain full-
 4 time employment. (AR 79).

5 Thus, due to the ALJ's failure to provide clear and convincing reasons to reject Plaintiff's
 6 testimony regarding sleepiness, drowsiness, nausea, and a need to nap or rest, the RFC is not
 7 supported by substantial evidence. It follows that the vocational expert's testimony has no
 8 evidentiary value. This error is not harmless because, as noted by the hypotheticals above, inclusion
 9 of limitations relating to said symptom testimony may result in a finding that Plaintiff is disabled.

10 * * * * *

11 In sum, the ALJ's discounting of the limitations in the opinions of Drs. Rand and Pham was
 12 supported by substantial evidence. The ALJ erroneously failed to provide clear and convincing
 13 reasons to reject Plaintiff's symptom testimony regarding her sleepiness, drowsiness, nausea, and
 14 need to nap or rest. The ALJ erroneously failed to acknowledge receipt of certain lay witness
 15 testimony. Lastly, the ALJ's RFC was not supported by substantial evidence and, as such, the
 16 vocational expert's testimony had no evidentiary value.

17 The decision whether to remand for further proceedings or simply to award benefits is
 18 within the discretion of the Court. *See Salvador v. Sullivan*, 917 F.2d 13, 15 (9th Cir. 1990).
 19 Remand for further proceedings is warranted where additional administrative proceedings could
 20 remedy defects in the decision. *See Kail v. Heckler*, 722 F.2d 1496, 1497 (9th Cir. 1984). Remand
 21 for the payment of benefits is appropriate where no useful purpose would be served by further
 22 administrative proceedings;⁶ where the record has been fully developed;⁷ or where remand would
 23 unnecessarily delay the receipt of benefits to which the disabled Plaintiff is entitled.⁸

24 Here, Plaintiff seeks an order from the Court awarding benefits (Doc. 11 at 20-21) and the
 25 Commissioner argues that the Court should affirm the ALJ's decision finding Plaintiff not disabled
 26 (Doc. 15 at 24). The Court concludes that remand for further proceedings is warranted because

27 ⁶ *Kornock v. Harris*, 648 F.2d 525, 527 (9th Cir. 1980).

28 ⁷ *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986).

⁸ *Bilby v. Schweiker*, 762 F.2d 716, 719 (9th Cir. 1985).

1 additional administrative proceedings may remedy the deficiencies in the ALJ's decision noted
2 herein.

3 **IV. CONCLUSION**

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's motion for summary judgment (Doc. 11) is GRANTED;
6 2. Defendant's cross-motion for summary judgment (Doc. 15) is DENIED;
7 3. This matter is REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for
8 further proceedings consistent with this decision; and
9 4. The Clerk of the Court shall enter judgment in favor of Plaintiff and against
10 Defendant, terminate any deadlines, and close this case.

11 IT IS SO ORDERED.

12 Dated: May 22, 2025

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15 UNITED STATES MAGISTRATE JUDGE
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